

SENATE BILL REPORT

SB 5229

As Reported By Senate Committee On:
Judiciary, February 7, 2007

Title: An act relating to marketing of estate distribution documents.

Brief Description: Prohibiting the marketing of estate distribution documents by persons not authorized to practice law in this state.

Sponsors: Senators Kline, McCaslin and Kastama; by request of Attorney General.

Brief History:

Committee Activity: Judiciary: 2/02/07, 2/7/07 [DPS].

SENATE COMMITTEE ON JUDICIARY

Majority Report: That Substitute Senate Bill No. 5229 be substituted therefor, and the substitute bill do pass.

Signed by Senators Kline, Chair; Tom, Vice Chair; McCaslin, Ranking Minority Member; Carrell, Hargrove, Murray, Roach and Weinstein.

Staff: Lidia Mori (786-7755)

Background: The practice of law as construed by Washington State courts includes not only legal representation of a client in court, but also legal advice and the preparation of legal instruments and contracts. Controversy and concern have arisen over the preparation and marketing of various documents, such as wills and trusts, that relate to the disposition of a person's property. In some instances, such documents are being prepared and marketed by persons who are not members of the state bar association.

RCW 2.48, the State Bar Act, makes the "unlawful practice of law" a crime. One way in which the crime is committed is for a nonlawyer to practice law or hold himself or herself out as entitled to practice law or to share legal fees with a lawyer. "Nonlawyers" for purposes of this statute include anyone not an active member in good standing of the state bar association. Committing the crime of unlawful practice for the first time is a gross misdemeanor, punishable by up to one year in jail and a fine of up to \$5,000. Any subsequent violation is a class C felony, punishable by up to five years in prison and a fine of up to \$10,000. The unlawful practice statute also states that a violation of that section by a person who is licensed in another business or profession may be grounds for discipline as unprofessional conduct in that business or profession. An action may be brought by a prosecuting attorney for an injunction and a civil penalty of up to \$5,000 for each violation of the unlawful practice statute.

This analysis was prepared by non-partisan legislative staff for the use of legislative members in their deliberations. This analysis is not a part of the legislation nor does it constitute a statement of legislative intent.

The Washington State Court Rules provide for the "limited practice" of law by nonlawyers in one area. The court rules authorize certain certified nonlawyers to select, prepare, and complete legal documents incident to the closing of real estate and personal property transactions.

Under the state's Consumer Protection Act (CPA), certain activities have been designated by the Legislature as unfair methods of competition and unfair or deceptive acts or practices in the conduct of trade or commerce. Various remedies for violations of the CPA are available, including authorization for the Attorney General to seek restraining orders. A person who is injured by a violation of the CPA may recover treble damages, costs, and reasonable attorney's fees.

Summary of Bill: Bill as referred to committee not considered.

SUMMARY OF BILL (Recommended Substitute): The Legislature intends to prohibit the marketing of services related to the preparation of estate distribution documents by persons who are not authorized to practice law. It is unlawful for anyone who is not authorized to practice law in this state to market estate distribution documents in or from the state. The unauthorized marketing of such documents is also a violation of the CPA. "Estate distribution documents" are documents such as wills or trusts that have either been prepared for a specific person or have been prepared as marketing materials, other than documents or marketing materials relating to payable on death accounts. Marketing includes an offer or agreement to prepare or provide individualized advice about an estate distribution document. A person who is not authorized to practice law in this state may nonetheless gather information or assist in preparing estate distribution documents if he or she is employed by someone who is authorized to practice law in this state and he or she does not provide legal advice.

Appropriation: None.

Fiscal Note: Not requested.

Committee/Commission/Task Force Created: No.

Effective Date: Ninety days after adjournment of session in which bill is passed.

Staff Summary of Public Testimony: PRO: Salespeople prey on seniors and convince them that they need a living trust. In the process, the salesperson elicits detailed information about the senior's assets, claiming that they need it to prepare the trust. Once the trust is sold, the salesperson uses the relationship to sell other financial products that are usually unnecessary and even against the person's best interests. This bill also clarifies the law, helps to protect seniors, and will simplify enforcement action by the Attorney General's Office. There is a lot of confusion in the market right now, and this bill will help by drawing a bright line.

Persons Testifying: PRO: Cheryl Kringle, Assistant Attorney General; Sandra Hernshaw, private attorney.